

1 **BOIES SCHILLER FLEXNER LLP**

2 David Boies (admitted pro hac vice)
3 333 Main Street
4 Armonk, NY 10504
5 Tel: (914) 749-8200
6 dboies@bsflp.com
7 Mark C. Mao, CA Bar No. 236165
8 Beko Reblitz-Richardson, CA Bar No. 238027
9 Erika Nyborg-Burch, CA Bar No. 342125
10 44 Montgomery St., 41st Floor
11 San Francisco, CA 94104
12 Tel.: (415) 293-6800
13 mmao@bsflp.com
14 brichardson@bsflp.com
15 enyborg-burch@bsflp.com
16 James Lee (admitted pro hac vice)
17 Rossana Baeza (admitted pro hac vice)
18 100 SE 2nd St., 28th Floor
19 Miami, FL 33131
20 Tel.: (305) 539-8400
21 jlee@bsflp.com
22 rbaeza@bsflp.com
23 Alison L. Anderson, CA Bar No. 275334
24 M. Logan Wright, CA Bar No. 349004
25 725 S Figueroa St., 31st Floor
26 Los Angeles, CA 90017
27 Tel.: (213) 629-9040
28 alanderson@bsflp.com
mwright@bsflp.com
Attorneys for Plaintiffs

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 CHASOM BROWN, WILLIAM BYATT,
23 JEREMY DAVIS, CHRISTOPHER CASTILLO,
24 and MONIQUE TRUJILLO individually and on
25 behalf of all other similarly situated,

26 Plaintiffs,

27 v.

28 GOOGLE LLC,

Defendant.

1 **SUSMAN GODFREY L.L.P.**

2 Bill Carmody (admitted pro hac vice)
3 Shawn J. Rabin (admitted pro hac vice)
4 Steven M. Shepard (admitted pro hac vice)
5 Alexander Frawley (admitted pro hac vice)
6 1301 Avenue of the Americas, 32nd Floor
7 New York, NY 10019
8 Tel.: (212) 336-8330
9 bcarmody@susmangodfrey.com
srabin@susmangodfrey.com
sshepard@susmangodfrey.com
afrawley@susmangodfrey.com

10 Amanda K. Bonn, CA Bar No. 270891
11 1900 Avenue of the Stars, Suite 1400
12 Los Angeles, CA 90067
13 Tel.: (310) 789-3100
14 abonn@susmangodfrey.com

15 **MORGAN & MORGAN**

16 John A. Yanchunis (admitted pro hac vice)
17 Ryan J. McGee (admitted pro hac vice)
18 201 N. Franklin Street, 7th Floor
19 Tampa, FL 33602
20 Tel.: (813) 223-5505
21 jyanchunis@forthepeople.com
22 rmcgee@forthepeople.com

23 Michael F. Ram, CA Bar No. 104805
24 711 Van Ness Ave, Suite 500
25 San Francisco, CA 94102
26 Tel: (415) 358-6913
27 mram@forthepeople.com

28 Case No.: 4:20-cv-03664-YGR-SVK

1 **RESPONSE TO REQUEST ON**
2 **AVAILABILITY OF PUNITIVE**
3 **DAMAGES**

4 Judge: Hon. Yvonne Gonzalez Rogers

1 On March 2, 2023, the Court reminded the parties it requested “briefing on the issue of
 2 whether punitive damages are recoverable where the underlying remedy sought is injunctive relief,
 3 not monetary damages.” Dkt. 885 at 1 n.2. Plaintiffs’ counsel have not found a case where punitive
 4 damages were awarded to a 23(b)(2) class where the underlying remedy sought is solely injunctive
 5 relief, not monetary damages. *See Cal. Civ. Code § 3294(a); see also Cal. v. Altus Finance S.A.*, 540
 6 F.3d 992, 1000 (9th Cir. 2008) (“California courts have long interpreted Section 3294 to require an
 7 award of compensatory damages, even if nominal, to recover punitive damages.”).

8 To the extent helpful to the Court, we identify the following cases and authorities discussing
 9 this issue, including the potential availability of punitive damages for a 23(b)(2) class where
 10 monetary relief exists that is “incidental” to the injunctive relief. *See Wal-Mart Stores, Inc. v. Dukes*,
 11 564 U.S. 338, 360 (2011) (courts may award monetary relief to 23(b)(2) classes so long as it is
 12 “incidental to the injunctive or declaratory relief”); *Risto v. SAG-AFTRA*, 2020 WL 5518600, *12
 13 (C.D. Cal. Sept. 14, 2020) (monetary relief is “‘incidental’” when it “consists of ‘damages that flow
 14 directly from liability to the class as a *whole* on the claims forming the basis of the injunctive or
 15 declaratory relief””) (quoting *Dukes*, 564 U.S. at 366); *Johnson v. Meriter Health Servs. Emp. Ret.*
 16 *Plan*, 702 F.3d 364, 372 (7th Cir. 2012) (monetary relief is “incidental” where calculation is
 17 “mechanical, formulaic, a task not for a trier of fact but for a computer program”); *Ellis v. Costco*
 18 *Wholesale Corp.*, 657 F.3d 970, 987 (9th Cir. 2011) (remanding so the “court may consider whether
 19 punitive damages are an allowable form of incidental monetary relief” under *Dukes*) (marks
 20 omitted); *Opperman v. Path*, 2016 WL 3844326, at *16 (N.D. Cal. July 15, 2016) (“[b]ecause the
 21 purpose of punitive damages is not to compensate the victim, but to punish and deter the defendant,
 22 any claim for such damages hinges, not on facts unique to each class member, but on the defendant’s
 23 conduct toward the class as a *whole*”) (quoting *Barefield v. Chevron, U.S.A., Inc.*, 1988 WL 188433,
 24 at *3 (N.D. Cal. Dec. 6, 1988)); *Delarosa v. Boiron, Inc.*, 275 F.R.D. 582, 592–93 (C.D. Cal. 2011)
 25 (finding punitive damages and statutory damages “incidental”); *Risto*, 2020 WL 5518600 at *13
 26 (permitting 23(b)(2) class to seek punitive damages because “incidental” and “will not raise any
 27
 28

1 individualized damages questions.”); 2 Newberg and Rubenstein on Class Actions § 4:37 (6th ed.)
2 (discussing monetary relief for 23(b)(2) classes).

3 Dated: May 2, 2023

4 Respectfully submitted,

5 By: /s/ Mark C. Mao

6 Mark C. Mao (CA Bar No. 236165)
mmao@bsflp.com

7 Samuel Issacharoff (pro hac vice)
8 si13@nyu.edu
9 40 Washington Square South
New York, N.Y. 10012
Telephone: (212) 998-6580

10 Beko Reblitz-Richardson (CA Bar No. 238027)
11 brichardson@bsflp.com
12 Erika Nyborg-Burch (CA Bar No. 342125)
enyborg-burch@bsflp.com
13 BOIES SCHILLER FLEXNER LLP
44 Montgomery Street, 41st Floor
14 San Francisco, CA 94104
Telephone: (415) 293-6800
Facsimile (415) 293-6899

16 David Boies (admitted pro hac vice)
17 dboies@bsflp.com
18 BOIES SCHILLER FLEXNER LLP
333 Main Street
19 Armonk, NY 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

21 James Lee (admitted pro hac vice)
jlee@bsflp.com
22 Rossana Baeza (admitted pro hac vice)
rbaeza@bsflp.com
23 BOIES SCHILLER FLEXNER LLP
100 SE 2nd Street, Suite 2800
24 Miami, FL 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

26 Alison L. Anderson (CA Bar No. 275334)
27 alanderson@bsflp.com
M. Logan Wright (CA Bar No. 349004)

mwright@bsflp.com
BOIES SCHILLER FLEXNER LLP
725 S Figueroa St., 31st Floor
Los Angeles, CA 90017
Telephone: (213) 629-9040
Facsimile: (213) 629-9022

Bill Carmody (pro hac vice)
bcarmody@susmangodfrey.com
Shawn J. Rabin (pro hac vice)
srabin@susmangodfrey.com
Steven Shepard (pro hac vice)
sshepard@susmangodfrey.com
Alexander P. Frawley (pro hac vice)
afrawley@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (212) 336-8330
Facsimile: (212) 336-8340

Amanda Bonn (CA Bar No. 270891)
abonn@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

John A. Yanchunis (pro hac vice)
jyanchunis@forthepeople.com
Ryan J. McGee (pro hac vice)
rmcgee@forthepeople.com
MORGAN & MORGAN, P.A.
201 N Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: (813) 223-5505
Facsimile: (813) 222-4736

Michael F. Ram (CA Bar No. 238027)
mram@forthepeople.com
MORGAN & MORGAN, P.A.
711 Van Ness Avenue, Suite 500
San Francisco, CA 94102
Telephone: (415) 358-6913
Facsimile: (415) 358-6923

Attorneys for Plaintiffs